

Decision 02-10-047 October 24, 2002

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company  
For an Expedited Order Confirming That PG&E  
May Enter Into an Agreement for Installation,  
Maintenance and Use of a Removal Floating Boat  
Dock on PG&E Property Under General Order  
69-C or, In the Alternative, for Approval Under  
Public Utilities Code Section 851.

(U 39 M)

Application 02-04-007  
(Filed April 8, 2002)

**OPINION CONFIRMING THAT PG&E MAY ENTER  
INTO AN AGREEMENT FOR INSTALLATION, MAINTENANCE  
AND USE OF A REMOVABLE FLOATING BOAT DOCK ON PG&E  
PROPERTY UNDER GENERAL ORDER 69-C**

On April 9, 2002, Pacific Gas and Electric Company (PG&E) filed its application for an expedited order approving an agreement for installation, maintenance and use of a removable floating dock on its property in Lake Almanor, CA. The application requested a finding that the proposed agreement is permissible without the need for Commission review and approval under General Order (GO) 69-C<sup>1</sup> or, in the alternative, that the Commission authorize the agreement consistent with Section 851 of the Public Utilities Code.<sup>2</sup> For the

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<sup>1</sup> GO 69-C, adopted July 10, 1985 provides, in relevant part,

“that all public utilities covered by the provisions of Section 851 of the Public Utilities Code [are] authorized to grant easements, licenses or permits for use or occupancy on, over or under any portion of the operative property of said utilities for rights of way, private roads, agricultural

*Footnote continued on next page*

purposes, or other limited uses of their several properties without further special authorization by the Commission whenever it shall appear that the exercise of such easement, license or permit will not interfere with the operations, practices and service of such public utilities to and for their several patrons or consumers; PROVIDED HOWEVER, that each such grant [to other than a public body] shall be made conditional upon the right of the grantor, either upon order of this Commission or upon its own motion, to commence or resume the use of the property in question whenever, in the interest of its services to its patrons or consumers, it shall appear necessary or desirable to do so.”

<sup>2</sup> Section 851 reads:

“No public utility other than a common carrier by railroad subject to Part I of the Interstate Commerce Act (Title 49, U.S.C.) shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it is void. The permission and approval of the commission to the exercise of a franchise or permit under Article 1 (commencing with Section 1001) of Chapter 5 of this part, or the sale, lease, assignment, mortgage, or other disposition or encumbrance of a franchise or permit under this article shall not revive or validate any lapsed or invalid franchise or permit, or enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or waive any forfeiture. Nothing in this section shall prevent the sale, lease, encumbrance or other disposition by any public utility of property which is not necessary or useful in the performance of its duties to the public, and any disposition of property by a public utility shall be conclusively presumed to be of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser, lessee or encumbrancer dealing with such property in good faith for value; provided, however, that nothing in this section shall apply to the interchange of equipment in the regular course of transportation between connecting common carriers.”

reasons set out below, we grant the request for a finding that the proposed agreement fits within the parameters of GO 69-C, subject to the additional requirements set out herein.

In doing so, we specify that our finding today applies only to floating boat dock agreements of this specified nature, and that similar agreements which may differ with respect to the potential use, operation or practices of the utility in providing services to its patrons or consumers, or terms of revocability, must be submitted to the Commission for review and approval. GO 69-C establishes three key criteria for permitting the granting of easements, licenses or similar interests without Commission approval under Section 851. The interest granted must be for “limited use”; not interfere with the utility’s operations, practices and service to its customers; and be revocable either upon order of the Commission or upon the utility’s own determination that it is desirable or necessary in the interest of service to its patrons or consumers. The agreement presented here will, after some modification of its language, meet all three criteria.

### **Limited Use**

The proposed agreement affects only a small fraction of the PG&E property at Lake Almanor. The facility to be installed consists of a 300 square foot floating dock, anchored by a chain tethered to a concrete block resting on the lake bottom. There does not appear to be any permanent construction involved and, should the easement be revoked in the future, the application states that dock and any physical changes resulting from the installation may be removed in its entirety without significant disruption or delay.

**Non-Interfering with Utility Operations and Practices**

In its application, PG&E has affirmatively represented that use of the proposed dock will not create a nuisance, be incompatible with the overall

recreational usage of Lake Almanor, or interfere with the company's provision of quality service. Further, PG&E has obtained, in response to this Commission's request, written confirmation from the Department of Fishing and Game (DFG), that no permits or approvals from DFG are required for construction of the floating dock.

### **Revocability**

The proposed agreement between the property owners (APO) and PG&E contains the following language regarding revocability in its Paragraph 5 (A):

“If the CPUC orders this Agreement to be terminated or modified pursuant to Commission General Order No. 69-C, then this Agreement shall be terminated and APO's and PG&E's right and obligations regarding APO's facilities shall be determined entirely without regard to this Agreement.”

In addition the agreement provides that PG&E may terminate the agreement based on a material breach of its terms or if the Federal Energy Regulatory Commission determines that the use creates a nuisance or is otherwise incompatible with the overall project recreational use (Paragraph 9.) Although PG&E indicates in the text of its application that it reserves the right to also terminate the agreement at will if it determines it is in the interest of its patrons and consumers to do so, we do not find this exact reservation in the agreement itself.

This express reservation must additionally be contained in the agreement itself to sufficiently capture the specific provisions and general intent of GO 69-C. For that reason, we condition the granting of this order on PG&E amending the agreement to include a provision which allows PG&E to terminate the agreement at will if it determines that it is in the interest of its patrons and consumers to do so. We direct PG&E to submit a compliance advice letter containing this

amended agreement within 30 days of this order. In addition to its usual service requirements, PG&E should serve the advice letter on Pamela Nataloni and Kenneth Lewis of the Commission staff. Other floating boat dock agreements of this nature with other Lake Almanor property owners should be similarly amended to fully comply with GO 69-C.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code, the otherwise applicable 30-day period for public review and comment is being waived.

### **Assignment of Proceeding**

Carl Wood is the Assigned Commissioner and Karl Bemederfer is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. The proposed agreement is for “limited use” consistent with GO 69-C.
2. The proposed agreement will not interfere with PG&E’s operations, practices, or provision of services to its customers.
3. As amended, the proposed agreement is revocable as required by GO 69-C.

### **Conclusion of Law**

If modified as required herein, the proposed Agreement is authorized by GO 69-C.

## **O R D E R**

### **IT IS ORDERED** that:

1. Pacific Gas and Electric Company (PG&E) is authorized to enter into a revocable floating dock agreement as modified by this opinion.

2. Within 30 days of the date of this order, PG&E shall submit a compliance advice letter containing the amended agreement. In addition to its usual service requirements, PG&E shall serve the advice letter on Pamela Nataloni and Kenneth Lewis of the Commission staff.

3. This application is closed.

This order is effective today.

Dated October 24, 2002, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
CARL W. WOOD  
GEOFFREY F. BROWN  
MICHAEL R. PEEVEY  
Commissioners